IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Terry J. Foley

Serial No.: 10/730,764

Filed: December 8, 2003

For: PLANTS AND SEEDS OF CORN VARIETY LH370

Group Art Unit: 1638

Examiner: McElwain, E.

Atty. Dkt. No.: HFSC:014US

CERTIFICATE OF ELECTRONIC SUBMISSION

Date of Submission: October 16, 2006

RESPONSE TO 37 C.F.R. §1.105 REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This paper is submitted in response to the 37 C.F.R. §1.105 Request dated June 14, 2006, for which the deadline to respond is October 16, 2006 in view of the enclosed Petition for extension of time and fees. No additional fees are believed due in connection with this paper. However, should any such fees become due, consider this paragraph a request and authorization to withdraw the appropriate fee under 37 C.F.R. §§ 1.16 to 1.21 from *Fulbright & Jaworski, L.L.P.* Account No. 50-1212/HFSC:014US.

REMARKS

The following information and remarks are provided responsive to the requests made in paragraph 3 of the 37 C.F.R. §1.105 Communication as known and readily obtained by Applicants pursuant to this section:

(i) The original parents from which corn variety LH370 was developed are designated LH283 and HC40. Variety LH283 also has the designation PS20529. Lines LH283 and HC40 are believed to have been on sale or in public use as of the filing date and thus "publicly available" as that term is used in the Request. Applicants understand this term to refer to whether the parent plants had been on sale or in public use as of the priority date of the current application. Clarification is respectfully requested if this interpretation is not what was intended.

(ii) Corn variety LH370 was developed from the single cross of LH283 x HC40 by selfing and using the pedigree system of plant breeding. Yield, stalk quality, root quality, disease tolerance, late plant greenness, late plant intactness, ear retention, pollen shedding ability, silking ability and corn borer tolerance were the criteria used to determine the rows from which ears were selected during the development of LH370.

(iii) LH283, one of the progenitors of LH370, is a proprietary field corn inbred line of Holden's Foundation Seeds, L.L.C., of Williamsburg, Iowa. In January 1997, Holden's applied for plant variety protection of LH283. On May 29, 1998 LH283 was awarded certificate #970078. U.S. Patent No. 5,773,683 issued on June 30, 1998 also protects LH283. HC40 (LH82 x LH93), the other progenitor of LH370, is a proprietary inbred line of F & E Enterprises, L.L.C., Lafayette, Indiana. There is an agreement between Holden's Foundation Seeds, L.L.C. and F & E Enterprises, L.L.C. which gives Holden's permission to use HC40 for breeding. On March 20, 1998 PVP application

#9800167 was filed for HC40, however, the application was abandoned on July 1, 2002. The extent of disclosure of progeny is provided under item (iv).

(iv) At or before the time of filing of the instant application there are believed to have been no other corn lines produced using said parental corn lines.

CONCLUSION

This is submitted to be a complete response to the referenced Communication. In conclusion, Applicant submits that the present case is in condition for allowance and such favorable action is respectfully requested.

The Examiner is invited to contact the undersigned at (512) 536-3085 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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Date: October 16, 2006